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AUG 17 1950
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Supreme Court of the United States

OCTOBER TERM, 1950

NO. 179

J. L. WALTON, J. S. PICKARD, A. E. TOWNSEND AND S. C. GURLEY, PETITIONERS,

vs

CITY OF ATLANTA, ET AL, RESPONDENTS

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

FILED

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Petitioners

VS

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JURISDICTION

Jurisdiction does not affirmatively appear upon the Record. The petition (R. 1- 11) fails to show diversity of citizenship or that the amount in controversy exceeds Three Thousand ($3,000.00) Dollars. The petition alleges in general terms that ordinances of the City of Atlanta attached to the petition as exhibits contravene alleged constitutional rights. The allegations in this particular are not substantial. It is uniformly held by this Court that jurisdiction must be denied in all cases coming before it where such jurisdiction does not affirmatively appear in the record on which it is called to act. *Mansfield etc. R. Co. v. Swan,*

111 U. S. 379; King Iron Bridge Co. v. Otoe County, 120 U. S. 225.

The existence of a substantial Federal question must be determined by the allegations of the bill of complaint. *City Ry. Co. v. Citizens' St. R. Co., 166 U. S. 557; Blumenstock Bros. Advertising Agency v. Curtis Publishing Co., 52 U. S. 436.*

STATEMENT OF THE CASE

The petition (R. 1 - 11) challenges the validity of the ordinance of the City of Atlanta, Georgia, approved September 8, 1949 (R. 16 - 20) together with amendments to the ordinance (R. 12 - 16). Section 1 of the ordinance (R. 16) declares that it is supplementary to all existing ordinances relating to the issuance, suspension and revocation of permits to drivers of motor propelled vehicles used in the transportation of passengers for hire over the streets of the City of Atlanta. Section 7 of that ordinance (R. 18) prohibits the issuance of permits to any applicant who has been convicted of named offenses. It is not alleged that any application for a permit has been refused by the defendant or that any existing permit has been revoked. The defendant filed a motion to dismiss upon the following grounds: that the complaint sets forth no cause of action; that the complaint is prematurely brought in; that it is based on mere apprehension of injury; that the plaintiffs have no constitutional or legal rights to operate a vehicle for hire; that no constitutional questions are involved; that it is not shown that the plaintiffs have suffered or will suffer any irreparable damage; that the complaint seeks injunctive relief against the enforcement of a penal ordinance; that the plaintiffs have a full, complete and adequate remedy at law; and that the question has been adjudicated. Upon hearing the District Court entered an order granting the motion to dis-

miss and dismissing the petition (R. 30). The Court below affirmed that decision (R. 32).

REASONS FOR GRANTING THE CERTIORARI

It is thought that no substantial reason exists for granting the Court's writ of certiorari in this case. None of the cases cited by counsel for the petitioners show any of the grounds for granting a certiorari set forth in sub-paragraph 5 of rule 38 of this Court. No Circuit Court of Appeals' decision in point has been cited in conflict with the decision which the petition seeks to review. The question raised by the petition has heretofore been determined against the contentions of the petitioners by this Court. One of the leading cases is *Packard v. Benton, 264 U. S. 140.*

It is well recognized and established by the decisions of this Court, which have been generally followed by all the other courts, both State and Federal, that the use of the streets for ordinary purposes may be controlled and regulated by public authority in the exercise of its police power whenever and to the extent necessary to provide for the safety, peace, health, morals and general welfare of the people. *Clark v. Poor, 274 U. S. 554; Morris v. Duby, 274 U. S. 135; 25 Amer. Jur., Highways, Paragraph 253.* Transportation of passengers for hire does not fall within the ordinary way in which streets are used. Their use for gain is special and may be wholly prohibited or conditioned as the municipal authorities may deem proper. *Packard v. Benton, 264 U. S. 140.* This distinction is the foundation of all franchises.

The leading Georgia case is *Schlesinger v. City of Atlanta, 161 Ga. 148,* which holds that individuals do not have the inherent right to conduct their private business in the streets of the city.

THE CHALLENGED ORDINANCE IS A REASONABLE EXERCISE OF THE POLICE POWER

The ordinance (R. 16 - 20) on its face is supplementary to existing ordinances and relates to the drivers of all motor propelled vehicles used in the transportation of passengers for hire over the streets of the City of Atlanta. It sets up a system for the procurement of permits. Section 7 (R. 18) prohibits the issuance of permits to persons who may have been convicted of manslaughter; driving a motor vehicle under the influence of liquor; any felony in which a motor vehicle is used; failure to stop and render aid; perjury or false swearing; conviction or forfeiture of bail not vacated upon three charges of violating motor vehicle laws of Georgia within a twelve month period; violation of any law involving moral turpitude and repeated violations of City ordinances which affect the safety of human life or limb upon the streets of the City. It will be noted from the amendment to the ordinance (R. 16) that the Chief's action in revoking a permit must be approved by the Mayor and General Council before it becomes effective. It does not appear that any person has been refused a permit nor does it appear that any permit has been revoked.

It is respectfully submitted that the petition for the writ of certiorari be denied.

Respectfully submitted,

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